

REMARKS

Applicant has cancelled claims 30-36 without prejudice, and reserves the right to further pursue these claims in a continuing application.

Applicant has amended the specification and Figs. 13B, 17, and 18 to correct minor editorial errors.

Claims 27-29 and 37-66 are pending with claims 27, 49, and 55 being independent.

In accordance with the Examiner's request, applicant has amended the specification to reflect that Application No. 09/453,120 is now abandoned.

Independent claim 27 relates to a flexible member holder including a tube, a shaft extending from the tube, a first tine at an end region of the shaft, and a second tine at the end region of the shaft. The first tine defines a first region for receiving a first portion of a loop of a flexible member and the second tine defines a second region for receiving a second portion of the loop of the flexible member. Claim 27 has been amended to recite that the flexible member holder includes "a tissue penetration device slidably received within the tube and configured to extend between the first and second regions."

The Examiner has rejected claims 27 and 29 as being anticipated by U.S. Patent No. 6,152,934 (Harper). Applicant requests withdrawal of this rejection at least because Harper fails to describe or suggest a flexible member holder having a tissue penetration device configured to extend between first and second regions defined by tines, as recited in claim 27.

The only tissue penetrating devices described by Harper are needles 43, 44. See Harper at col. 5, lines 55-57 and col. 6, lines 25-34 and Figs. 1-3. However, the needles 42, 44 do not extend between first and second regions 164, 166, which the Examiner equates with the claimed regions. Rather, as Harper explains, the surgeon passes the needles through the pledget, the tissue, and the prosthesis, none of which are located between the first and second regions 164, 166 of the applicator 130. See Harper at col. 6, lines 39-50 and Figs. 1-3. Accordingly, applicant requests withdrawal of the rejection of claim 27 and claim 29, which depends from claim 27.

The Examiner has rejected claims 27-29 as being anticipated by U.S. Patent No. 6,152,936 (Christy). Applicant requests withdrawal of this rejection because Christy fails to describe or suggest at least a flexible member holder having a tissue penetration device configured to extend between first and second regions defined by tines, as recited in claim 27.

The only element in Christy's device that passes through the fingers 122, which the Examiner equates with the claimed region, is a tissue grasping instrument (G in Fig. 25A), which does not penetrate tissue. See Christy at Figs. 25A-25H and 26A-26G. Accordingly, applicant requests withdrawal of the rejection of claim 27 and claims 28 and 29, which depend from claim 27.

Claims 37-48 depend from claim 27 and are allowable for at least the reasons that claim 27 is allowable.

Independent claim 49 relates to a flexible member holder including a tube and a shaft extending from the tube. The shaft has a first region for receiving a first portion of a loop of a flexible member and a second region for receiving a second portion of the loop of the flexible member. The flexible member holder includes a tissue penetration device slidably received within the tube and configured to extend between the first and second regions. Claim 49 is allowable for at least the reasons that claim 27 is allowable.

Claims 50-54 depend from claim 49 and are allowable for at least the reasons that claim 49 is allowable and for containing allowable subject matter in their own right. Independent consideration and allowance of these claims is requested.

Independent claim 55 relates to a method that includes positioning a first portion of a loop of a flexible member at a first region of a shaft and positioning a second portion of the loop of the flexible member at a second region of the shaft. The method also includes sliding a tissue penetration device through the tube such that the tissue penetration device extends between the first and second regions of the shaft. Claim 55 is allowable for at least the reasons that claim 27 is allowable.

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Claims 56-66 depend from claim 55 and are allowable for at least the reasons that claim 55 is allowable and for containing allowable subject matter in their own right. Independent consideration and allowance of these claims is requested.

Applicant requests consideration of the IDS submitted by applicant on December 27, 2002.

Enclosed is a \$930.00 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

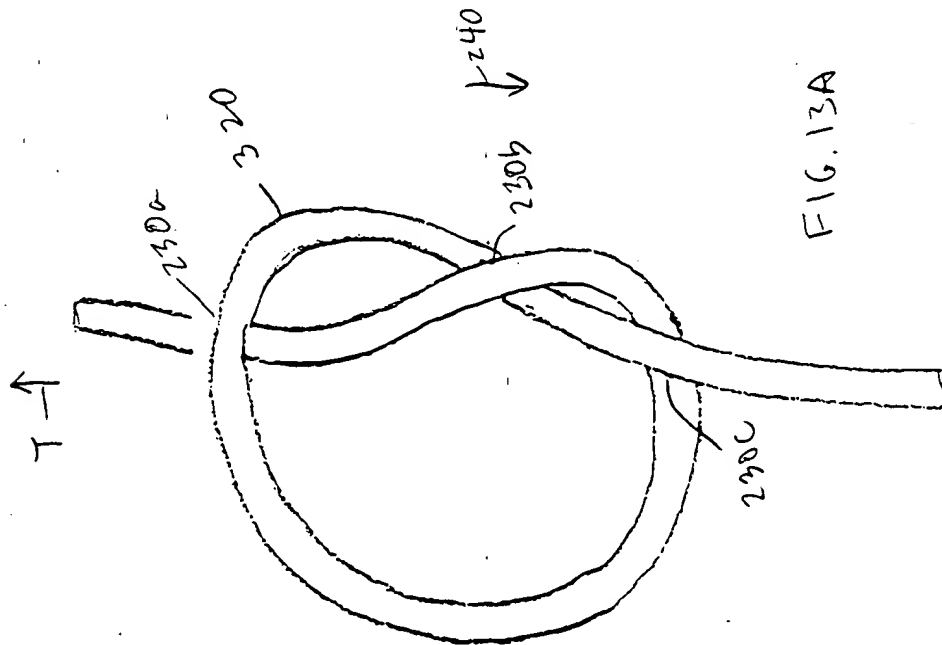
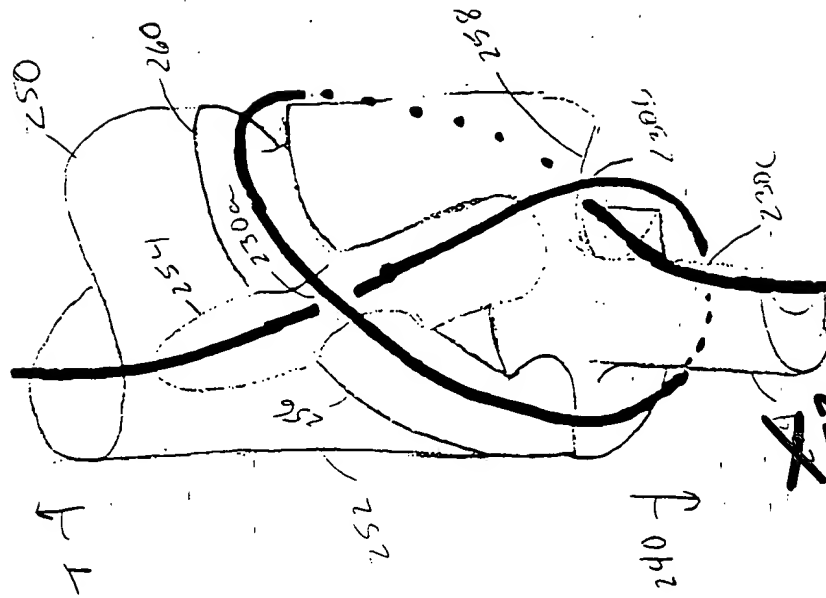
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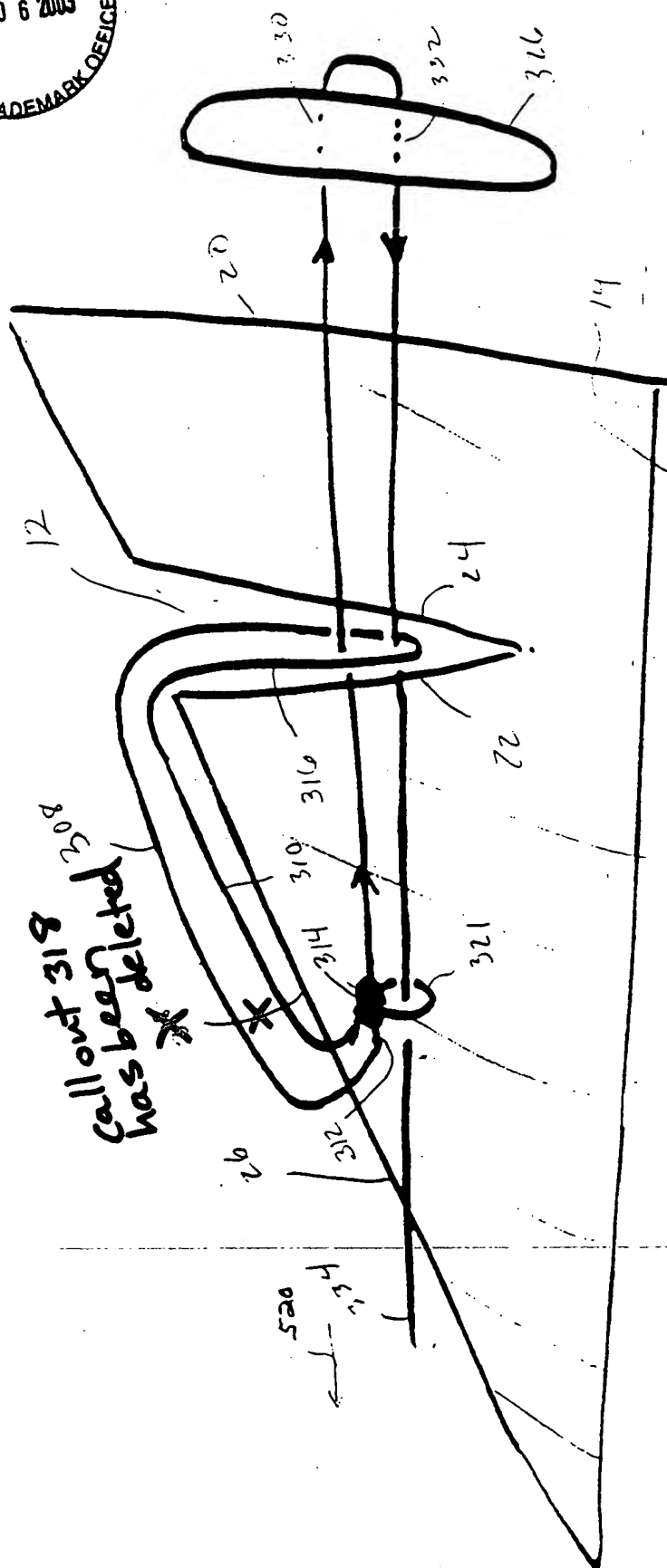
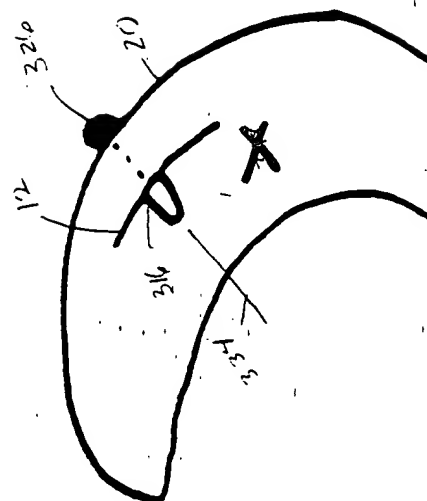


Fig. 17



815.18

callout 318 has
been deleted